

APR 17 2012

FCC Mail Room

*Before the*  
***Federal Communications Commission***  
*Washington, D.C. 20554*

In the Matter of :	)	
	)	
Hillcrest Baptist Church	)	CGB-CC-0525
	)	CSR
Video Programming Accessibility	)	
	)	
Closed Captioning	)	

To: Deputy Chief, Policy Division, Media Bureau:

**REPLY OF HILLCREST BAPTIST CHURCH OF EL PASO, TX**  
**TO SUPPLEMENTAL RESPONSE OF CONSUMER GROUPS**

HILLCREST BAPTIST CHURCH of El Paso, TX ("Hillcrest"), by its counsel, herewith submits the instant REPLY to the SUPPLEMENTAL RESPONSE ("Supplement") filed by the Telecommunications of the Deaf and Hard of Hearing Inc. et al. ("Consumer Groups"), in the above captioned proceeding. In support whereof, the following is stated:

1. In its Supplement, Consumer Groups states that "Hillcrest argues for the first time in its reply that it cannot afford to caption its programming because the cost of captioning would exceed its specific 'broadcast budget' (Supplement at p. 3)." That statement is not correct. In Hillcrest's Petition (para. 4 at p. 3), Hillcrest stated that "Hillcrest does not generate any income from the broadcast" and that the "broadcast service is ancillary to the primary mission of the church." Hillcrest went on to state that "the members [of the church] have a right to expect that revenues received will be used for the church's primary ministry and not diverted to programs not specifically earmarked in their donations... (*ibid*)."

Finally, Hillcrest stated that "the programming owner is a local church whose primary mission includes an offering of weekly worship services in the church building (*ibid*)."

Accordingly, the arguments related to this point

are not new, and the Supplemental Response should be stricken as it relates to this issue.

2. Nevertheless, to the extent the Commission may consider these arguments, the following is stated. Hillcrest is a church. Hillcrest is not a broadcast production company. It is not a religious broadcast company. It is not an FCC licensee. It is not commissioned by any governmental authority on earth. As a church, Hillcrest Baptist has received its commission from God (the “Great Commission”). The members of Hillcrest Baptist church have the right and authority to worship God without interference from the Federal Government. This right is recognized by the Constitution of the United States in the First Amendment to the U.S. Constitution. The doctrine of “separation of Church and State” precludes the State from coming under the governmental authority of the Church but, more importantly, precludes the Church from coming under the governmental authority of the State. If the separation is interpreted to flow in only one direction and not the other, then the declared “separation of Church and State” is no more than a legal fiction. There may be instances in which the “wall of separation” may be pierced. However, it is respectfully submitted that this is not such an instance.

3. The wall of separation applies first and foremost to financial support. Historically, the government of England, as well as the governments of other European nations, provided support for the Church that was recognized by the government of that nation. In the case of England, that was the Church of England. The First Amendment to the U.S. Constitution established a wall of separation that precluded the financial support of any Church by the Federal Government (later applied to the States by the 14<sup>th</sup> Amendment). Just as the government may not give money to support a Church, it cannot tax a Church in a manner that would violate the wall of separation. For example, the government cannot grant a tax exemption to one Church or religious institution without granting the same right to all Churches or religious institutions. To do so would create a favored status for the Church receiving the exemption, and that would be a clear violation of the

Establishment Clause of the U.S. Constitution.

4. In addition, donating funds to a Church is almost universally recognized as an essential element of “worship.” This concept was codified in the Law of Moses centuries before Christ, and the concept dates back to the patriarch Abraham who gave “tithes” (a tenth) to Melchisedec (Hebrews 7:2). Jesus said “Render to Caesar the things that are Caesar’s and to God the things that are God’s” (Mark 12:17). It is respectfully submitted that the funds collected by a Church as part of its worship service are subject to the wall of separation of Church and State. These funds were rendered unto God in worship. Any government action that would dictate how those funds are spent is a clear violation of the principle of separation of Church and State.

5. It may be argued that funds contributed to a Church for the support of a broadcast outreach, rather than as part of the worship service, might be treated differently. It may be argued that funds received by a religious broadcaster (as opposed to a Church) might be treated differently. In this case, however, the funds in question were received as part of a Church worship service. It has been clearly stated in previous submissions to the Commission that Hillcrest receives no income from the broadcast of its religious services – none. All of the surplus income is money that was donated as part of Hillcrest’s function as a Church. All of that income was contributed as an act of worship by its members.

6. Because Hillcrest is a Church and because the surplus funds that it has received were received as a part of the worship services of the Church, any government directive as to how Hillcrest must spend those funds would be a violation of the principle of separation of Church and State. Nothing could be clearer than that. For that reason, the arguments made by Consumer Groups under Sections II and III of its Supplement must fail. As regards the arguments contained in para. II of the Supplement, any funds received by the Church as a part of its worship

service cannot be considered in evaluating the status of the petitioner. Those funds cannot be the subject of any form of governmental directive under the doctrine of separation of Church and State. The government, simply stated, cannot intrude in the financial affairs of a Church in any way that could result in one Church being favored over another. The mere possibility that the Commission could conclude that one Church should receive an exemption while another church should not would violate the anti-establishment clause of the First Amendment, being a *de facto* means of providing financial support to the Church that was granted the exemption.

7. Likewise, the arguments of the Consumer Groups must fail as relates to Section III of its Supplement, pertaining to the First Amendment. The comments regarding the chilling effect on free speech (which Hillcrest stands by) were submitted in response to the Consumer Groups opposition pleading and were not intended to in any way limit the First Amendment argument in this case to one of free speech. The proposed governmental action here will in fact violate the Church's First Amendment right of freedom of speech. It will also violate the rights of Church members to free exercise of religion as to how they worship God through the giving of money to the Church. Finally, and most importantly, it will violate the Establishment Clause of the First Amendment for the reasons stated hereinabove.

8. In conclusion, the matters addressed by Consumer Groups are not new arguments raised for the first time in Hillcrest's Reply pleading. To the extent Consumer Groups felt it important to supplement its showing, it is of note that Consumer Groups failed to supplement its prior arguments as relates to its claim that Hillcrest failed to exhaust all avenues for attaining assistance. As stated by Hillcrest in its Reply, at p. 4, in the unlikely event that Consumer Groups knows of any group that would be willing to fund closed captioning for individual churches, such as Hillcrest, "Consumer Groups should identify ... such an entity...." Consumer Groups has still not identified such an entity, and its argument that Hillcrest has failed in its

obligation regarding potential funding of its closed captioning must be rejected.

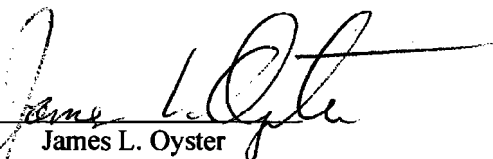
WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant Hillcrest an exemption from the requirements of 47 C.F.R. 79.1 of the Commission's Rules as may be appropriate under the circumstances or, in the alternative hold that application of these requirements to Hillcrest would be in violation of the First Amendment to the U.S. Constitution.

Respectfully submitted,

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April 12, 2012

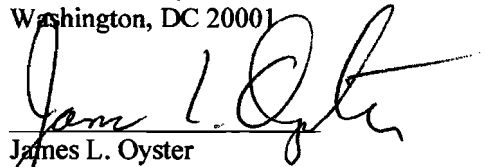
HILLCREST BAPTIST CHURCH

By   
James L. Oyster  
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing REPLY pleading by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 12th day of April, 2012, to the following:

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